IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

CIVIL WRITS No. 2082 of 2004

SOHAN SINGH
V/S
JODHPUR VIDYUT VITARAN NIGAM LTD. & ORS

HON'BLE SHRI R P VYAS,J.

Mr. SKM VYAS, for the appellant / petitioner

Mr. KULDEEP MATHUR, for the respondent

Date of Order : 10.2.2005

ORDER

The instant petition is preferred against the order Annexure 1,while challenging the date of birth in the service record by the Department, which is not on the basis of the service record, but it was changed at a very late stage by the Department without affording an opportunity of hearing and enquiry to the petitioner.

Brief facts of the case are that the petitioner is challenging the order of the respondent whereby the employer had re-opened the matter of date of birth after lapse of 26 years of service of employee particularly that the date of birth given by employee was misrepresentation or fraud.

The petitioner was initially appointed as Helper on 06.7.1977 (Annexure 1) and date of birth of the petitioner was mentioned as 02.11.1959. It is further submitted that the petitioner has a unblemished service record and regular fixation had been made and selection grade was granted to him and service record was verified by the respondents from time to time. Thereafter, the petitioner was selected by the Screening Committee for the promotion to the post of Vehicle Driver and in compliance of that he was promoted to the said post and thereafter he was transferred to various office but no objections regarding his date of birth was raised not only that the seniority list was issued time to time, the date of birth of the petitioner has been shown as 02.11.1959. It is further submitted that the petitioner is a illiterate person and there was no documentary proof regarding school leaving certificate recording his age, although he has submitted his horoscope at the time of initial appointment in the year 1977.

It is also argued that the respondents have straight-way without giving any notice to the petitioner, changed his date of birth, no notice was ever served upon him and by the order passed by the Executive Engineer (DD), Rajasthan State Electricity

Board, Jodhpur has changed in the particulars of the service record of the petitioner and date of birth has been changed as 02.11.1949 instead of 02.11.1959 and changing the date of birth was not served to the petitioner and this has only come into the knowledge of the petitioner in the month of March, 2003, when the verified service book was asked by the petitioner from the department.

Being aggrieved and dissatisfied by the action of the respondents, the petitioner submitted a detailed representation dated 12.6.2003 (Annex.2) to the respondents authorities and also served a notice dated 01.7.2003 (Annex.3) for demand of justice through his counsel on 01.7.2003, but the same were not given any heed by the respondents and no replies were given regarding submitting of the representation with reference to the dispute regarding the date of birth. Being aggrieved and dissatisfied with the arbitrary order Annexure 1, whereby the date of birth substituted as 02.11.1949 in stead of 02.11.1959, the present writ petition has been filed.

Learned counsel appearing for the respondents authorities submitted that the petitioner has not come with clean hands under Article 226 of the Constitution of India and he has concealed the material facts from

the record regarding the relief which has not been pleaded particularly in this petiton and the same have been concealed, but the facts are otherwise and on the ground of concealment of facts, the writ petition deserves to be dismissed.

It is further argued by the learned counsel appearing for the respondents that the Account Officer (IA-Exp.), RSEB, Jodhpur vide its letter dated 08.10.1998 addressed to the Superintending Engineer (DC), RSEB, Jodhpur informed him that the audit work relating to the establishment and purchase of Bilara Division Office was conducted by the audit party of his office. While checking the service book of the petitioner, a correction was found in his date of birth. Initially, it was 2.11.1949 but by over writing it has been changed to 2.11.1959. It is also contended that any Gazetted Officer does not also attest the correction. The Accounts Officer vide his letter dated 08.10.1998 (Annexure R/1) further requested the Superintending Engineer (DC), RSEB, Jodhpur to take a serious action in the matter as this is a serious irregularity and disciplinary action is required to be taken against the responsible person.

On receiving the letter dated dated 08.10.1998, the action was initiated by the then

Executive Engineer (DD), RSEB, Jodhpur in the matter and directed the petitioner to appear before him on 06.1.1999 for submitting his explanation/statement in the matter vide order dated 04.1.1999 (Annexure2). The petitioner, pursuant to the order Annex.2 appeared before the then Executive Engineer (DD), RSEB, Jodhpur and showed his ignorance about the correction in date of birth, in service book and stated that the correction was not done at his instance. However, in his statement, the petitioner in an unambiguous term stated that he has absolutely no objection, if his date of birth is changed to 2.11.1949 by making correction in the service book vide Annexure R/3.

It is further argued by the learned counsel for the respondents that the respondent-department has adopted due care and caution in the matter. The Executive Engineer (DD), RSEB, Jodhpur after recording statements of the petitioner proceeded further in the matter and requested the Medical Superintendent, M.G.Hospital, Jodhpur vide letter dated 8.4.1999 (Annex. R/4) to conduct a medical examination of the petitioner to provide finding about the date of birth of the petitioner.

Thereafter, the Medical Board consisting of Senior Doctors of M.G. Hospital, Jodhpur conducted the

medical examination on 19.4.1999 (Annex.5) of the petitioner and it is opined by the Medical Board that the clinical and radiological age of the petitioner is about 50 to 60 years. The respondent department after undertaking aforesaid exercise, reached to the conclusion that the correct date of birth of the petitioner is 2.11.1949 instead of 2.11.1959 and a correction was made in the service book of the petitioner and his date of birth was made as 2.11.1949.

Learned counsel for the respondents submits that in view of the above submissions, it is clear that the petitioner was very well aware of the fact that the respondents are conducting an enquiry to find out his correct date of birth and the petitioner himself participated in the inquiry conducted by the respondents. He not only appeared before the Executive Engineer (DD), RSEB, Jodhpur for recording of his statement, but also appeared before the Medical Board of the M.G. Hospital, Jodhpur, which was constituted to find out clinical age of the petitioner.

Heard learned counsel for the parties at length and examined the complete record.

It is admitted position on record that the petitioner was very well aware of the fact that the

respondents are conducting an enquiry to find out his correct date of birth. It is admitted on record that the petitioner also participated in the said proceedings and was given sufficient opportunity of hearing. It has also come on the record that the petitioner also appeared before the Executive Engineer (DD), RSEB, Jodhpur for recording his statements. In his statements, he has clearly stated that he has no objection if his date of birth is changed to 2.11.1949 by making correction in the service record. Thereafter, he was also examined by the Medical Board of the M.G. Hospital, Jodhpur, which was constituted to find out clinical age of the petitioner, in which it was opined that the clinical and radiological age of the petitioner is about 50 to 60 years. Despite all these admitted facts, nothing has been said in the present writ petition. Thus, it is very well revealed that the petitioner has not come to the Court with clean hands. Apart from that, there is no iota of evidence that any illegality or material irregularity has been committed by the Department while correcting his date of birth.. This is a question of fact, which cannot be looked into by this Court.

In view of the aforesaid admitted position, the date of birth, which was interpolated, has been corrected by the Department, after affording a

reasonable opportunity of hearing to the petitioner. Thus, in such a scenario, the petitioner cannot claim for equity and he is estopped to invoke the extra-ordinary jurisdiction of this Court under Article 226/227 of the Constitution of India.

In this view of the matter, I do not find any ground to interfere with the impugned order.

The writ petition lacks merits and is hereby dismissed. There will be no order as to costs.

(R P VYAS),J.

/Anil/